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CONFIDENTIAL

Public (Elections) (1949) Department.

Ms. SERIES.

G.O. No. 3496

Dated 14th October 1949

[Despatch Abstract.]

ELECTIONS - New Constitution - Electoral rolls - Preparation - Draft rolls - Amendment with reference to Citizenship clauses - Instructions to be issued - Papers recorded.

STRICTLY CONFIDENTIAL

Public (Elections) Deptt.

For Assistant Secretary I

LECTIONS - New Constitution - Electoral Rolls - Citizenship qualification.

The Citizenship Clauses of the New Constitution have since been finalised by the Constituent Assembly, vide Articles 5, 5A, 5AA, 5B, 5C and 6 as passed by the Constituent Assembly during its present session. Persons who are citizens of India at the date of commencement of the Constitution with reference to the provisions of Articles 5, 5A and 5AA will, subject to the provisions of any law that may be made by Parliament under the New Constitution, continue to be such citizens, unless and until their citizenship is terminated under any law enacted by Parliament in exercise of the powers conferred by Article 6.

We have to consider what instructions we should issue regarding the amendments to be made in the draft Electoral Rolls with reference to these clauses. It seems unlikely that a comprehensive Citizenship Law will be enacted by Parliament on the lines of the British Nationality Act 1948, before the publication of the electoral rolls, and we may have to deal with the matter solely with reference to the provisions in the Articles referred to above. Note to me as to the manner in which the citizenship qualification of persons including non-Indians ~~shoul~~ should be checked up with reference to these Articles. It will be best to notify all the additions and deletions as suo motu amendments made by the Registration Officer, and publish them along with the lists of claims and objections, so that the decision of the Revising Authority could be taken in due course and the changes finalised.

The cases of refugees from Pakistan will have to be finalised with reference to articles 5A, and 5AA. The declaration which we have already taken of their intention to reside permanently here, is of no particular importance now, and certainly not~~xx~~ sufficient, and all the cases will have to be hecked up with reference to the provisions of these articles.

We shall have to issue, in due course, complete and self-contained executive instructions regarding the suo motu amendments to the draft rolls. We have already reserved, for such action, certain types of cases, for example, claims of non-Indians who are otherwise qualified, belated applications for enumeration, etc.

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24-8-1949

B' ~~on p.1 ante~~ above

In the work of enumeration of voters under the New Constitution, it was ordered that in the cases of European and other persons of foreign nationality who claimed before the enumerators that they are Indian citizens they may be asked to show how they claimed the Indian Citizenship with reference to Article 5 as it originally stood. It was also ordered that for the purpose of clause (ii) of the explanation under the Article, the claimant's intention to deposit the requisite declaration in writing in the office of the District Magistrate, if expressed in writing and given to the enumerator might be accepted ~~xxxx~~ and acted upon provided he was otherwise qualified. With reference to this instruction in almost all cases of non-Indians the enumerators might have obtained the claimants' statement in writing of their intention to deposit the requisite declaration in writing in the office of the District Magistrate In Memorandum No.7425/48-3 Public (Elections) dated 14-12-1948, it was ordered that the enumeration forms relating to European, Burmese, Ceylonese, Malayans and all other non-Indians should be kept ~~x~~ separately and not taken into account when writing up the manuscript rolls. It was instructed that when the New

Constitution is enacted and the position becomes clear and final, these enumeration forms could be scrutinised and the names of the qualified persons included in the list of additions made by the Registration Officers suo motu and published along with the lists of claims and objections to the preliminary electoral rolls. Instructions have now to be issued as to the manner in which the citizenship qualifications of persons including non-Indians have to be checked up with reference to the Articles relating to citizenship in the Draft Constitution as finalised.

2. Under Article 5 as finally adopted by the Constituent Assembly every person (1) who has his domicile in the territory of India,

(2) who has not voluntarily acquired the citizenship of any foreign state, and

3) (a) who was born in the territory of India, or

(b) either of whose parents was born in the territory of India; or

(c) who has been originarily resident in the territory of India for not less than five years immediately preceding the date of commencement of the New Constitution,

shall be a citizen of India. To be deemed an Indian citiz it is necessary for a person to satisfy conditions (1) and (2) above and one of the three clauses in condition (3) abov

3. It is submitted that in the case of all Indians residing in India there can be no doubt as to their claim of Indian citizenship under Article 5 of the New Constitution as finally adopted and it does not seem necessary to review their cases with a view to exclude them from the draft rolls by deletions made suo motu by Registration Officers at the time of publication of preliminary rolls. seems therefore that the further review and scrutiny may confined to the cases of all non-Indians whose enumerati forms have been kept separate for scrutiny and further action as stated in para 1 above.

4. The first condition of the Indian citizenship is that the person should have his domicile in the territory of India (Dominion of India). Under Article 5 of the Draf Constitution as it originally stood, a person will also have domicile in India if he acquires such domicile by deposing a declaration in writing of his desire to acquire such domicile and has resided in India for atleast one month before the date of the declaration. As this proposed special concession for acquisition of domicile has been omitted in the final form of Article 5, the statement in writing obtaine from such persons by enumerators with reference to the instructions in G.O.No.2008 Public (Elections), dated 19-8-1948, is of no use and has no effect. Under the existing law on domicile, a person will have his domicile in India in the following classes of cases:-

(i) If his domicile of origin is in India, i.e. if he is a person of legitimate birth, his father was domiciled in India at the time of his birth, or if he is a posthumous child, his deceased father was domiciled in India at the time when he died; if the person was an illegitimate issue, if at the time of his birth. his mother was domiciled in India.

(ii) If his domicile of origin is not in India, he has acquired domicile in India by taking up his fixed habitation here.

The explanation to Sec. 10 of the Indian Succession Act i important her

iii). If he has acquired his domicile in the Dominion of India by filing a declaration under Sec. 11 of the Indian Succession Act, i.e., by filing the requisite declaration of his desire to acquire such domicile after residence in India for not less than one year immediately preceding the time of his making the declaration.

It has to be verified in the case of non-Indians whether they come under any of the above classes. In the case of non-Indians they will acquire domicile mostly in either of the ways (ii) and (iii) above. It may be instructed that in this verification, it will be the duty of the persons concerned to produce the requisite evidence to satisfy the Registration Officers or other officers that they come under any of the above provision.

Yes. But we may urge India to issue the notification as soon as the New Constitution comes into force.

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24-9-43

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5. Pending the notification of the President regarding the countries outside India which are to be treated as foreign States, it may be safely assumed that countries of the Commonwealth will not be treated as foreign ~~xxx~~ States, as India has decided to remain within the Commonwealth. It may therefore be instructed that even citizens of the U.K., Burma, Malaya, Ceylon etc., may be deemed to satisfy the condition (2) in para 2 above This condition requires only that the acquisition of the citizenship of any foreign state is not voluntary. Therefore even citizens of foreign states may be deemed to satisfy this condition if their acquisition of such citizenship was not voluntary. However it does not seem necessary to include these persons suo motu in the list of claims. It may be left to them to file their own claims and satisfy the Revising Authorities as to how their acquisition of the citizenship of the foreign state was not voluntary. It may, however, be explained for the information of the Registration Officers and the Revising Authorities as to what can be construed as voluntary acquisition as in the Additional Secretary's note on pp.15-16 n.f. of L.F. II.

The claims petitions received may be verified locally before the matter is placed before the Revising Authorit

6. In condition (3) in para 2 above, there are three alternative clauses and it is enough for the person concerned to satisfy any one of these clauses. These will have to be checked up by local enquiry and if the persons concerned produce any documentary evidence to show that they satisfy either of these clauses it should be accepted. It may be instructed accordingly.

Articles 5-A and 5-AA relate to refugees from Pakistan.

7. Under Article 5-A, refugees from Pakistan are divided into two categories

(1) those who had migrated to India before 19-7-48 and have been residing within India since the date of their migration;

(2) those who had migrated to India on or after 19-7-1948.

Those in class (1) above are automatically treated as Indian citizens. In the case of those in class (2) above, they have to be registered as citizens of India by an officer appointed in this behalf by the Government of India on application made by them after having resided in India for atleast six months. In the enumeration of voters, it was instructed that refugees from Pakistan, should, if otherwise qualified, be enumerated on a declaration by them of their intention to reside permanently in the town or village where found at the time of enumeration. This is of course necessary as according to the resolution of the Constituent Assembly on electoral qualifications this, in effect, confers residential qualification on the refugees - vide sub-para (4) of the Resolution. The...

The question of domicile of refugees has of course to be decided solely with reference to the provisions of Article 5-A and this as shown above depends on the date of migration to India. It may be instructed that the case of each refugee may be checked up with reference to these provisions. The refugees may be required to produce evidence to show that they get Indian Citizenship under the provisions. As the names of refugees have been included in the rolls, it will be necessary to exclude all those persons who do not satisfy the Registration Officers as to their domicile in India, by suo motu deletions made at the time of publication of preliminary rolls.

8. Article 5-AA applies to the case of persons who had migrated from India to Pakistan after 1-3-47. They lose the rights of Indian citizenship by such migration. But the proviso to the Article applies when such persons return to the territory of India; then they acquire Indian citizenship in the same manner as Pakistan refugees who migrated to India after 19-7-48 (viz. class (2) specified above). This may be explained to the Registration Officers so that the cases of such persons may also be checked up.

We may safely assume that Parliament will not have time to enact a comprehensive citizenship law on the lines of the British Nationality Act, 1948, providing for termination of citizenship and other connected matters before the publication of the preliminary rolls under the New Constitution; in other words, we may assume that one of the prescribed qualifications for registration as a voter in the first rolls under the New Constitution will be that the person should be a citizen of India at the date of commencement of the New Constitution or one who should be deemed to be a citizen of India at the date of the under the provisions of relating to citizenship in the Constitution Act

The registration of Pakistan refugees has to be checked up de novo with reference to Articles 5A and 5AA. This will, however, be a simple matter as most of the refugees in this Province came over to India from Pakistan before 19th July 1948. All that has to be done, therefore, is for the Registration Officer to check up the cases of refugees registered in the draft rolls - we have deliberately added a distinguishing mark 'x' in the notes to distinguish these cases - to see if they are qualified with reference to the provisions of Articles 5A and 5AA and delete suo motu the names of those who are not qualified. Refugees whose names are not found in the draft rolls may be told that they should formally file their claims under the new electoral law and these claims may be verified in the ordinary way and decided upon by the Revising Authority

Legal Secretary may see before circulation.

Legal Department

Seen. So far as I can see, there seems to be no legal objection to the proposals contained of Public (Elections) above.

K.V.R.
27-9-1949.

Public (Elections)

The citizenship clauses of the New Constitution have since been finalised by the Constituent Assembly - vide Articles 5, 5A, 5AAA, 5B, 5C and 6 at (N). This file relates

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relates to the instructions to be issued to Registration Officers regarding the amendments to be made in the draft electoral rolls with reference to these clauses. These instructions may be issued along with other instructions in a consolidated form when the printed draft rolls are ready and due for publication as preliminary rolls after the enactment of the new Electoral Law under the New Constitution.

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2. The position of non-Indians and Pakistan Refugees in regard to Indian Citizenship with reference to these clauses has been examined in this Department's notes on pp. 3-4 above. Legal have stated that there is no legal objection to the proposals of this department. The file may be circulated for approval of the proposals in paras 4, 5 and 6 on pp. 3-4 ante and M at pp 3-4 above.

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4-10-1949.

K.R.M.
5-10-49

B.G.R.
6-10-49 H.M.(Fin.)

K.M.M.
7-10-49 H.M. (E & L)

P.S.K.
9-10-49 H.Pr.

Please see A ~~on p.9 ante~~ above and orders in circulation above. An extract of the notes and orders in this file may be taken and added to the "Executive Instructions" file. This file may be closed and recorded in a G.O. after making a Call Book entry against 15-1-1950 with reference to M on p.3 ante.

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14-10-1949

G.O.Ms.No.3496 Confdl. dated 14-10-1949.

ELECTIONS - New Constitution - Electoral Rolls - Preparation - Draft ~~rolls~~ rolls - Amendment with reference to Citizenship clauses - Instructions to be issued - Papers to be recorded.

(True copy)

Superintendent,
Madras Record Office.

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